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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

JACOB MARTIN CAMACHO,

Defendant and Respondent.

E077269

(Super.Ct.No. FWV20004082)

OPINION

APPEAL from the Superior Court of San Bernardino County. Shahla Sabet, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed.

Jason Anderson, District Attorney, Heather Dwyer, Deputy District Attorney for Plaintiff and Appellant.

Suzanne Antley, under appointment by the Court of Appeal, for Defendant and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On November 17, 2020, a felony complaint charged defendant and respondent Jacob Martin Camacho with possession of a firearm by a felon under Penal Code¹ section 29800, subdivision (a)(1) (count 1); unlawful possession of ammunition under section 30305, subdivision (a)(1) (count 2); and carrying a loaded firearm on one's person or in a vehicle under section 25850, subdivision (a) (count 3).

On February 2, 2021, defendant filed a section 1538.5 motion to suppress the evidence giving rise to the charges. On March 4, 2021, a magistrate judge held a preliminary hearing on the motion and denied the motion. On March 30, 2021, defendant renewed his motion to suppress under section 1538.5, subdivision (i), and moved to dismiss the complaint under section 995. On April 20, 2021, the trial court held a special hearing on the renewed motion to suppress. The court granted the motion to suppress evidence and to dismiss the charges.

On June 18, 2021, the People filed a timely notice of appeal. For the reasons set forth *post*, we reverse the trial court's April 20, 2021, order, and reinstate the magistrate judge's March 4, 2021, order denying defendant's motion to suppress.

B. FACTUAL HISTORY

On November 14, 2020, Officer Nakamura with the Upland Police Department conducted a traffic stop on a vehicle for a broken brake light. The two people inside were

¹ All further statutory references are to the Penal Code unless otherwise specified.

defendant, in the front passenger seat, and Jeffery Peterson, the driver. Upon contact with the occupants, the officer recognized both of them from prior contacts involving narcotics. The officer also knew them to be associated with persons who possessed weapons.

Officer Nakamura asked defendant and Peterson if there were narcotics in the vehicle. The officer then obtained consent from Peterson for a vehicle search. Defendant disclosed almost immediately that he had a “rig”² on him. The officer continued speaking to both Peterson and defendant while waiting for backup to conduct the consent search.

Once backup arrived, Officer Nakamura asked defendant to exit the vehicle and obtained consent to search his person. During the consent search, defendant informed the officer that he was on PRCS³ status and that he had a firearm in the vehicle.

Officer Nakamura asked Peterson for consent to search the vehicle again; Peterson consented. The firearm and an additional magazine were in a backpack located in the rear passenger area of the vehicle. The backpack also contained papers with defendant’s name. Defendant disclosed that he found the firearm.

² “A term for drug paraphernalia such as hypodermic needles.”

³ “ ‘Post-Release Community Supervision.’ ”

DISCUSSION

1. THE TRIAL COURT IMPERMISSIBLY CONDUCTED A DE NOVO REVIEW OF THE RENEWED MOTION TO SUPPRESS

On appeal, the People contend that the trial court “impermissibly conducted a de novo review of the renewed motion to suppress at the special hearing.” For the reasons set forth *post*, we agree with the People.

At a special hearing in the trial court to review a magistrate judge’s denial in a preliminary hearing of a motion to suppress, the evidence “shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the People may recall witnesses who testified at the preliminary hearing.” (§ 1538.5, subd. (i).) Thus, the trial court is “bound by the factual findings of the magistrate and, in effect, becomes a reviewing court drawing all inferences in favor of the magistrate’s findings, where they are supported by substantial evidence.” (*People v. Ramsey* (1988) 203 Cal.App.3d 671, 678-679 (*Ramsey*); *Anderson v. Superior Court* (1988) 206 Cal.App.3d 533, 538-539.) A defendant cannot raise a new theory in a renewed motion hearing where it was not litigated at the preliminary hearing first. (*People v. Bennett* (1998) 68 Cal.App.4th 396, 407 (*Bennett*).)

“We note the scope of review of suppression motion rulings has changed due to a 1985 amendment to section 1538.5, subdivision (i). Formerly, whether or not a defendant made a suppression motion at a preliminary hearing, the defendant was entitled to a ‘de novo’ consideration of the evidence by the superior court. Thus the superior

court was the fact finder whose express and implicit factual determinations were given deference on appeals by defendants and the People. [Citations.] The 1986 amendment, however, makes the findings of the magistrate ‘binding’ on the superior court when a suppression motion has already been brought at the preliminary hearing, except to the extent new evidence is allowed by the superior court. [Citations.] While the 1986 amendment could be clearer, it appears intended to make the magistrate the fact finder and the superior court a reviewing court, bound to resolve factual conflicts and draw inferences in favor of the magistrate’s ruling.” (*People v. Trujillo* (1990) 217 Cal.App.3rd 1219, 1223-1224, fns. omitted.) Therefore, “[a]n additional consequence of this amendment is that, on further appellate review of a suppression motion, the appellate courts must give the magistrate’s express and implicit factual determinations the same deference formerly given those by the superior court.” (*Id.* at p. 1224.)

In this case, the People argue that the court’s order must be reversed because, “instead of a proper review, the superior court judge examined the testimony on a *de novo* basis and made her own findings. This is evident by the following statements: ‘I will go over [the transcript of [the] body camera footage] again after I heard your arguments, *looked at the factual circumstances*, based on your arguments you have mentioned. And I will take this matter under submission.’ [Citation.] ‘My tentative was—I don’t know if I put it on the record, but at least in chambers was to grant the motion because of the *totality of the circumstances* and all of the factors that *I heard and reviewed* through the transcript.’ ” We agree with the People that the trial court improperly conducted a *de novo* review. Here, at the renewed motion to suppress, the

trial court examined Officer Nakamura's testimony on a de novo basis and did not consider the factual findings made by the magistrate at the initial motion.

As provided *ante*, on February 2, 2021, defendant filed his first motion to suppress evidence obtained in the search under section 1538.5. The motion alleged the search violated defendant's Fourth Amendment rights because the officer had no warrant, no probable cause to suspect criminal activity, and no evidence of criminal activity in plain view. Moreover, defendant argued that his detention was unlawfully prolonged because it went beyond what would have been necessary for the officer to pursue the reason for the traffic stop, a broken brake light.

On March 4, 2021, the magistrate judge conducted a preliminary hearing and heard defendant's motion to suppress. At the hearing, Officer Nakamura testified. He relied on the transcript of his body camera recording to refresh his recollection of his interaction with Peterson and defendant. During Officer Nakamura's testimony, he stated that he stopped the vehicle in question for a broken brake light. The officer went on to describe the driver and passenger and that he had contacts with them prior to this stop. During the stop, the officer asked the driver if he had any drugs or narcotics in the car. After a few minutes, the officer stated he wanted both of the driver and defendant out of the vehicle because he did not know if there were any weapons in the vehicle. The officer first searched the defendant. The officer then spoke with defendant and he gave the officer permission to search defendant. Defendant mentioned that he was on PRCS and stated he found a gun in the vehicle. While searching the vehicle, after receiving

permission from the driver, the officer found a handgun in a backpack in the rear passenger area. The backpack also contained documents with defendant's name on it.

After the officer's testimony, both counsel made arguments regarding the motion to suppress. Defense counsel argued that the detention was unduly prolonged under the circumstances of this case. At one point, the court asked, "Well, how much time passed in this prolonged detention then? It wasn't entirely clear to the Court. There was some discussion of perhaps less than a five-minute conversation at some point." To the prosecutor, the court asked, "do you wish to address the issue as to whether Officer Nakamura prolonged the detention when instead of writing a citation for the brake light, he began some interaction, some discussion, with the driver that may have lasted upwards of—some time less than five minutes but did not involve a discussion as to the reasons for the traffic stop? [¶] It involved some other reasoning. A discussion that occurred for perhaps up to five minutes before, I guess, the driver was asked to step out and then apparently consented to a search of both his person and the vehicle, which then led to the search of Defendant Camacho." The court went on to state that "[i]t wasn't just small talk. I mean, [the officer's] asking about any dope that the driver might have had, that sort of thing. What do you make of that?" At that point, the prosecutor pointed out that "it wasn't five minutes prior to [the officer] asking to search the car. I believe the entire interaction lasted five minutes."

After hearing further argument from both the prosecutor and defense counsel, the court stated as follows:

“All right. I don’t believe that Officer Nakamura was going to ask these sorts of questions just of any car he might have stopped on that particular occasion. It appears to the Court from the officer’s testimony that the reason those sorts of questions were asked was because Officer Nakamura had some familiarity with the subjects in the car, both the driver and the defendant, and desired to order both of them out of the car because of officer safety concerns with regard to the history of narcotics and weapons offenses. [¶] There is no doubt in my mind that the initial traffic stop was justified. I think [defense counsel] has raised legitimate issues as to whether the detention was prolonged after the initial traffic stop for the brake light. However, I don’t believe there’s sufficient evidence here to find an unduly prolonged detention.

“It appears the officer does ask some questions of the driver with regard to officer safety concerns, with regard to any possible narcotics that might have been in the vehicle. The officer is certainly justified in asking both the driver and the defendant to step out of the vehicle.

“The search of the persons and the vehicle appear to be consensual. It doesn’t appear that there’s any dispute as to that. Furthermore, it appears that the search of Defendant . . . would have been justified by a search condition pursuant to AB109 and PRCS release.

“So the question is whether any detention was prolonged. This appears to be—in the officer’s words—a not very lengthy interaction between him and the driver. Certainly less than five minutes. It appears that the total interaction was less than 5 minutes, including any discussions that might have been had, the stepping out of the vehicle, the

search of the driver, and then the officer making his way to the other side of the vehicle to interact with Defendant Camacho.

“I don’t believe, based on the evidence I’ve heard, that the detention was unduly prolonged, particularly given the familiarity and the history that Officer Nakamura had with both the driver and the defendant in this case. It does appear to me that the officer safety concerns were legitimate and that Officer Nakamura acted upon those, and in doing so, did not unduly prolong the detention in this case.

“All right. So for those reasons, the Court is going to deny the Defense request to suppress evidence under Penal Code Section 15385.”

On March 30, 2021, defendant filed a renewed motion to suppress under section 1538.5 and to dismiss under section 995. Defendant alleged that the magistrate erred in denying his motion to suppress because he was detained without a warrant or reasonable suspicion, and even if it were justified, it was unreasonably prolonged. On April 6, 2021. The People filed an opposition to defendant’s motion.

On April 15, 2021, at the hearing on the renewed motion to suppress evidence, Officer Nakamura testified again. During his testimony, Officer Nakamura described why he pulled the vehicle over and the reasons why he detained and searched both the driver and defendant, the passenger. Moreover, the officer testified that defendant informed him that he was on PRCS. The officer went on to describe what he would normally do during a traffic stop, and what he did in this case. The parties also stipulated to include the transcript of the videotaped interaction between the officer and defendant during the stop. After hearing testimony and arguments from counsel, the trial court took

the matter under submission. The court stated: “I will go over it again after I heard your arguments, looked at the factual circumstances, based on your arguments you have mentioned. And I will take this matter under submission.” On April 20, 2021, the trial court rendered its decision. The court stated: “All right. My tentative was—I don’t know if I put it on the record, but at least in chambers was to grant the motion because of the totality of the circumstances and all of the factors that I heard and reviewed through the transcript.” The court never mentioned the findings made by the magistrate at the first hearing. Instead, the court indicated that it rendered its decision after reviewing the “totality of the circumstances” and reviewing the transcript. Thereafter, the trial court granted the motion to suppress and the section 955 motion to dismiss the complaint.

As noted *ante*, at the hearing on the renewed motion, the trial court was “bound by the factual findings of the magistrate and, in effect, becomes a reviewing court drawing all inferences in favor of the magistrate’s findings, where they are supported by substantial evidence.” (*Ramsey, supra*, 203 Cal.App.3d at pp. 678-679.) Moreover, a defendant cannot raise a new theory in a renewed motion hearing where it was not litigated at the preliminary hearing first. (*Bennett, supra*, 68 Cal.App.4th at p. 407.)

In *Bennett*, the defendant filed a motion to suppress evidence before the preliminary hearing. He asserted three separate grounds for relief. (*Bennett, supra*, 68 Cal.App.4th at p. 399.) At the hearing on the motion, however, defense counsel only challenged the initial detention. (*Id.* at pp. 399-400.) The magistrate judge found that the initial detention was justified because of the defendant’s possible involvement in criminal activity, and denied the motion. (*Id.* at p. 400.) Thereafter, defense counsel filed a

renewed motion to suppress evidence in the trial court based on the same three grounds as presented in the initial written motion. (*Ibid.*) Over the prosecutor's objection, the trial court informed the parties that the preliminary hearing record was " 'sparse and inadequate,' " and decided to hold " 'an evidentiary hearing so that the facts can be fully presented.' " (*Ibid.*) The trial court then held a full evidentiary hearing on a de novo basis. The prosecution recalled the initial officer who testified at the preliminary hearing, and a second officer. After the hearing, the trial court ultimately denied the renewed motion. The court of appeal found that the trial court committed procedural error in holding a second evidentiary hearing outside the bounds of the statute by reviewing all of the evidence de novo, as well as by allowing the defense to advance theories not presented at the preliminary hearing. The appellate court stated: "The immutability of truth and legislative fiat bar a second evidentiary hearing on such motions, except as provided in the section, even when the trial court concludes the record of the initial hearing is 'sparse and inadequate.' " (*Id.* at p. 399.)

Here, as in *Bennett*, at the hearing on the renewed motion to suppress, the trial court committed procedural error by independently reviewing the evidence. (*Bennett*, *supra*, 68 Cal.App.4th at p. 399.) Instead of reviewing or considering the magistrate judge's factual findings and drawing all inferences in favor of the magistrate's findings, when supported by substantial evidence, the trial court reviewed the evidence presented at the second hearing de novo. The trial court's review, therefore, was procedurally improper and violated section 1538.5's mandate to hold only one evidentiary hearing.

Defendant, however, contends that “[b]ecause the Superior Court did not hear any new evidence or make any new findings of fact at the special hearing, this case is completely different from [*Bennett*].” Both the People and defendant agree that the trial court, at the renewed motion to suppress, did not admit new evidence. Defendant essentially argues that because there was no new evidence submitted at the renewed motion, the trial court did not conduct a de novo review. We disagree. At the renewed motion, the court was “bound by the factual findings of the magistrate and, in effect, becomes a reviewing court drawing all inferences in favor of the magistrate’s findings, where they are supported by substantial evidence.” (*Ramsey, supra*, 203 Cal.App.3d at pp. 678-679.) Here, as discussed *ante*, the trial never mentioned the magistrate’s findings and instead, conducted an independent review of the evidence. Therefore, the trial court’s order granting defendant’s motion to suppress and dismiss is reversed.

2. THE MAGISTRATE PROPERLY DENIED DEFENDANT’S MOTION
TO SUPPRESS

In this case, the magistrate judge made findings of fact regarding the length of the detention and correctly found that Officer Nakamura was within the bounds of the Fourth Amendment. A magistrate’s findings of fact must be upheld if supported by substantial evidence and all presumptions are drawn in favor of those factual determinations. (*People v. Laiwa* (1983) 34 Cal.3d 711, 719, superseded by statute on another ground as stated in *People v. Trujillo, supra*, 217 Cal.App.3rd at p. 1223; see, also, *Ramsey, supra*, 203 Cal.App.3rd at p. 312 [“Because the superior court is the reviewing court rather than the fact-finding court, the appellate court no longer reviews the findings of the trial court.

Rather, . . . the appellate court disregards the findings of the trial court and reviews the determination of the magistrate who ruled on the motion to suppress”]) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*People v. Cole* (2004) 33 Cal.4th 1158, 1212.)

Here, at the hearing on defendant’s first motion to suppress, defendant did not challenge the initial stop made by Officer Nakamura. When the magistrate judge asked, “[t]ell me again, the 1538.5 contesting just the detention and what else?” Defense counsel responded, “The prolonged detention, which would be the detention.” On appeal, defendant again “does not contest the validity of the initial traffic stop.” Defendant, however, contends that it was improper for Officer Nakamura to order defendant out of the car when the officer lacked “a belief that either of the men was armed [citation] and despite the lack of any weapons in plain view in the car.” We disagree with defendant.

Passengers in a vehicle may be ordered out of the car during a traffic stop, as long as the initial stop was lawful. (*Maryland v. Wilson* (1997) 519 U.S. 408, 415; *People v. Vibanco* (2007) 151 Cal.App.4th 1, 10.) “ ‘An officer making a traffic stop may immediately take the reasonable steps he or she deems necessary to secure the officer’s safety, including ordering a passenger to remain in or to get out of the vehicle, without violating the Fourth Amendment.’ ” (*Vibanco*, at pp. 11-12.) Providing officers the ability to control the scene by detaining passengers during a traffic stop is reasonable and justified where the officer’s concern for his safety outweighs the “minor convenience a brief detention imposed” upon the passenger. (*Id.* at p. 10.) The United State Supreme

Court stated that “danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.” (*Maryland*, at pp. 414-415.) In addition, during the course of investigation, the officer “has every right to talk to anyone he encounters while regularly performing his duties.” (*Vibanco*, at p. 13.) An officer does not need a reasonable suspicion to ask questions or request identification from passengers in a traffic stop. (*Id.* at pp. 13-14.)

Here, at the hearing on the first motion to suppress, Officer Nakamura testified that he recognized both the driver and defendant upon contacting them. He stated, “[b]oth subjects, from my knowledge, have numerous or extensive history with narcotics and have been related to people possessing weapons. So for my safety and the safety of my partners during my investigation, I wanted to remove them out of the vehicle because I did not know if there were any weapons inside.” Thereafter, once defendant stepped out of the car, he allowed the officer to search him. When the officer asked if there was anything illegal inside the car while searching him, defendant mentioned he found something in the car. Although the officer believed that item to be narcotics, defendant told him it was not narcotics. Defendant then told the officer that he found a gun in the vehicle.

The magistrate, prior to making a ruling on the motion, stated: “I don’t believe that Officer Nakamura was going to ask these sort of questions just of any car he might have stopped on that particular occasion. It appears to the Court from the officer’s testimony that the reason those sorts of questions were asked was because Officer Nakamura had some familiarity with the subjects in the car, both the driver and the defendant, and desired to order both of them out of the car because of officer safety concerns with regard to the history of narcotics and weapons offense.”

Based on the above, we find there is substantial evidence to support the court’s finding that Officer Nakamura’s questioning, even on unrelated subjects, was not improper.

We next turn to whether the detention was unduly prolonged. Traffic stops “must be reasonable in duration and not prolonged beyond the time necessary to address the traffic violation.” (*People v. Gallardo* (2005) 130 Cal.App.4th 234, 238.)

In *Gallardo*, the court found that there was no evidence that the detention was prolonged “as only a very few minutes had elapsed between the deputy’s initial contact with defendant and defendant’s consent to search.” (*People v. Gallardo, supra*, 130 Cal.App.3rd at p. 238.) The court found that there was “no evidence that defendant’s detention was unreasonably prolonged by the consensual search, and therefore the length of the detention cannot be the basis for suppressing the fruits of the search.” (*Id.* at p. 238.)

Similarly, in this case, the magistrate made a finding of fact that the entire interaction between defendant and Officer Nakamura was “not very lengthy” and

“[c]ertainly less than five minutes.” The magistrate stated: “It appears that the total interaction was less than five minutes, including any discussions that might have been had, the stepping out of the vehicle, the search of the driver, and then the officer making his way to the other side of the vehicle to interact with Defendant Camacho.” As a result, especially given the officer’s concern for his safety, the detention was not unduly prolonged. Moreover, even if the detention of defendant took longer than a typical traffic stop, the stop was justified because “circumstances which develop during a detention may provide reasonable suspicion to prolong the detention.” (*People v. Russell* (2000) 81 Cal.App.4th 96, 102.) In this case, Officer Nakamura recognized both the driver and defendant from prior contacts. Officer Nakamura was reasonably concerned for his safety and ordered them out of the car. While speaking with defendant, defendant told the officer he had a gun. The information discovered during the traffic stop provided the officer reasonable suspicion to prolong the detention beyond a typical traffic stop. Here, the magistrate relied on Officer Nakamura’s testimony wherein the officer stated that “[t]he whole interaction, to my recollection, was not very lengthy,” and that approximately “less than” five minutes passed while he spoke with the driver until the time he told defendant to exit the vehicle. Not only was the officer’s testimony credible, but it was also not challenged during the hearing. Therefore, the magistrate’s finding is supported by substantial evidence.

We find the magistrate’s findings of fact are supported by substantial evidence and the magistrate correctly applied the law to the facts to deny defendant’s motion to suppress evidence. The trial court, therefore, erred when it conducted a de novo review

of the renewed motion to suppress, and granted both the motions to suppress and dismiss the case. Therefore, we reverse the trial court's orders granting defendant's motion to suppress evidence and motion to dismiss the case.

DISPOSITION

The trial court's April 20, 2021, order granting defendant's section 1538.5 motion to suppress and section 995 motion to dismiss is reversed; the magistrate's March 4, 2021, order denying defendant's section 1538.5 motion is affirmed.

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MILLER

J.

We concur:

McKINSTER

Acting P. J.

CODRINGTON

J.